

840 CMR 26.00: CONSULTANTS

840 CMR 26.00 is the standard rule for the retention of a consultant promulgated by the pursuant to M.G.L. c. 7, § 50 and M.G.L. c. 32, §§ 21 and 23. Except as may otherwise be provided by the Commission, or by supplementary rules of a particular retirement board approved by the Commission pursuant to 840 CMR 14.02, or by statute, 840 CMR 26.00 is the standard rule for the approval of a consultant.

26.01: Retention of a Consultant

- (1) Any board which employs a consultant must apply for approval of the consultant from the Commission by filing an application for approval on Form 25 with the Commission. Such application shall take place with respect to consultants employed as of the effective date of 840 CMR 26.00, prior to the board executing a contract extension, renewal or new contract or six months after the effective date of 840 CMR 26.00, whichever is earlier.
- (2) Any such consultant must be registered as an investment adviser pursuant to the Investment Advisers Act of 1940 (15 U.S.C. 80b - 1 *et seq.*).
- (3) Any such consultant must be deemed a qualified consultant by the Commission prior to providing services to the board.
- (4) Boards shall use the following process in selecting consultants:
 - (a) Boards shall establish specifications and criteria for selection including:
 1. whether a full-line consulting firm will be employed or whether a limited-line firm will be employed;
 2. the type of firm to be selected (a firm offering a wide range of products or services or a firm specializing in the consulting area);
 3. the experience of the consulting firm's personnel;
 4. an initial determination as to whether the existing consultant will be retained automatically;
 5. the range of fees that are considered tolerable; and
 6. the consultant's experience in policy restrictions including South Africa and Northern Ireland and tobacco.
 - (b) A written contract shall be executed stating all terms and conditions of employment including, but not limited to, an itemized list of services to be provided, term of employment, fees and termination provisions. No contract shall contain a provision which requires the indemnification of the consultant by the retirement board. A copy of every contract shall be retained by the board and be subject to audit by the Commission.
- (5) Fee schedules shall not be based on a percentage of assets but shall be based on a fixed dollar amount based on services provided.

(6) A consultant shall inform the and the board of any arrangements, oral or in writing, for compensation or other benefit received or expected to be received by the consultant or a related person from others in connection with the consultant's services to the board.

(7) A consultant shall disclose to the Commission and the board any compensation paid or expected to be paid, directly or indirectly, by the consultant or a related person to others for referring the services of the consultant to the board.

(8) A consultant shall disclose to the Commission and the board in writing any conflict of interest the consultant may have which could reasonably be expected to impair the consultant's ability to render unbiased and objective advice.

(9) All consultants shall submit Form ADV Part II of the Uniform Application for Investment Adviser Registration to the board and to the Commission.

26.02: Determination of Qualifications of Consultant; Review of Application

(1) Consultant. The Commission shall determine, for every application for approval, whether the board has a consultant registered as an investment adviser pursuant to the Investment Advisers Act of 1940 (15 U.S.C. 80b - 1 *et seq.*) as required by 840 CMR 26.01(2).

(2) Review of Application. If the Commission determines that the board has a consultant as required by 840 CMR 26.01(2), the Commission shall review the selection process of the consultant, review the information contained in the application for approval, and review the professional qualifications of the consultant in accordance with 840 CMR 26.03.

26.03: Rating of Qualifications for Consultants

In rating qualifications for consultants the Commission shall develop and disseminate objective criteria uniformly to be applied in an equitable fashion. These criteria shall include, but not be limited to, the professional qualifications of the consultant, public and private pension accounts as of the year preceding the year of application, staffing of consulting organization, consulting organization, and reporting and client servicing.